

Ms Sarah Albon, Chief Executive
Health and Safety Executive
Redgrave Court
Merton Road
Bootle L20 7HS

6th April 2021

Via email

Dear Ms Albon

Flawed Guidance by Public Health England Endangers Healthcare Workers

I am a qualified Health and Safety Practitioner with 25 years' experience and have a reasonable level of expertise in the field of protection of workers from hazardous substances, be they chemical or microbiological.

I have great admiration and respect for the Executive and the valuable work it does to protect workers from injury, illness and death. I support HSE as a voluntary member of your 'COSHH Essentials Working Group' (CEWG) and must commend your staff who organise and support the work of that group in providing user-friendly safety advice for employers and employees alike.

However, this letter does not concern CEWG matters. I am writing to you on a personal basis to convey my deep concerns about a matter which is fast becoming a national scandal and which the HSE is not only in a position to remedy but I believe is duty-bound to remedy.

Guidance issued by Public Health England and the Department of Health and Social Care specifies that respiratory protection of healthcare workers shall be provided by the provision of Type IIR fluid resistant surgical masks (FRSMs). The only exception to this is where certain specified aerosol-generating procedures (AGPs) are being performed.

Their guidance is founded upon questionable evidence and flagrantly ignores sound evidence provided by research carried out at your own Health and Safety Laboratory. This research convincingly demonstrated that surgical masks do not protect against the inhalation of airborne pathogenic viruses. Research Report [RR619](#) was carried out specifically to inform the Government's planning for pandemics. Whilst the research involved experimentation with live 'influenza A' viruses, the general findings and recommendations are equally applicable to SARS-CoV-2 virus, since the virions are not of significantly dissimilar size or morphology.

A search of the internet shows that, in the last 12 months, your report has been referenced over 70 times in journals, articles, evidence reviews etc, by way of evidencing that surgical masks do not provide healthcare workers with protection against SARS-CoV-2. One would have expected that either HSE or HSL would have made some comment about this. However, the only response which ever comes from HSE is that the policy on respiratory protection for healthcare workers is set by PHE and DHSC without any comment as to whether HSE supports or rejects that policy.

Whilst I can appreciate the delicacies of relationships between Government departments, there comes a point when one has to question just how long HSE will stand quietly by as this ill-founded policy continues to cause further workplace infections. This is a question which HSE would most likely be asked at any future judicial review or public inquiry.

Although we are in the final stage of the second wave and vaccination of healthcare workers will hopefully reduce infection rates amongst them, the potential for vaccine-resistant variants and the possible arrival of the European 'third wave' means that we cannot rest on our laurels. It is therefore essential that healthcare workers be provided with the RPE that they so richly deserve.

I have published a report on the issue (attached) and offer the following summary of the key points for your consideration:-

- Around a thousand healthcare workers have died during the pandemic.
 - Whilst some of these infections may have been caught in the community, the ONS statistics suggest, on the balance of probabilities, that a significant number of these have been caught in their workplace.
 - You may wish to discuss this with Ms Lucy Darnton, HSE's statistician who sits as an observer on the Industrial Injuries Advisory Council and will therefore have had oversight of [their report](#) which highlights (at paragraphs 55-56) that:
 - Elevated death rates were found amongst ambulance staff, nurses, nursing auxiliaries and nursing assistants;
 - The relative risk of death was more than double that of the general working population for male nurses and social care workers;
- **IF** PHE/DHSC advice is correct, and FRSM masks and visors are sufficient protection whilst working with covid patients, then the infection and death rates should be very much lower than the general working population:
 - Their guidance is based on the assumption that transmission is via respiratory droplets falling on surfaces (fomites) then being picked up by others and entering the body via the hand-to-mouth/nose/eyes route. Their guidance for respiratory protection does not reflect the potential for aerosol transmission as patients cough, talk and simply exhale;
 - We need to remind ourselves that:
 - Healthcare workplaces have exemplary standards of hygiene, existing infection control procedures (regularly monitored and audited) which are implemented by sensible, diligent and well-trained staff;
 - Fomites (surfaces upon which respiratory droplets may have fallen) are subject to regular and better cleaning and disinfection than most ordinary workplaces;
 - Provision of hand-sanitising liquids and gels is ubiquitous in hospitals, ambulances and other health/social care settings;
 - Staff are wearing masks and visors so the potential for virus transfer from hand to mouth/nose/eyes is almost impossible.
 - The notion of COVID-19 infection via fomites being a major cause of disease spread has been scientifically discredited (as reported in [the Lancet](#))
- The only explanation for the increased infection and mortality rates amongst these workers is that PHE/DHSC advice is wrong. The only credible explanation is that the infections are being caught via inhaling aerosols which circumvent or penetrate the loose-fitting FRSM masks that they are misleadingly told will keep them safe.
- The potential for aerosol transmission of SARS-CoV-2 through coughing has been investigated by researchers in Bristol. Their [report](#) convincingly demonstrates that SARS-CoV-2 aerosolisation is likely to be high in all areas where patients are coughing. Because the viral load in the emitted aerosols is higher in the earlier stages of infection, the risk to staff in acute medical units, general medical wards or emergency departments is equal to, or even greater than, the risk in the critical care wards where FFP3 masks are mandatory. Yet staff in these wards, ambulances etc are only provided with surgical masks for their protection.
- Since the pandemic first struck, PHE have persistently dismissed the notion of airborne transmission and stuck to the mantra of 'Hands, Face, Space', reflecting respiratory droplet and fomite transmission.

It is, however, interesting to note that they have, just recently acknowledged that airborne transmission occurs. They have published guidance for the general public which reflects this – hence the mantra has been updated to 'Hands, Face, Space, Fresh Air'.

Inexplicably, however, PHE have not updated their guidance for hospital, ambulance or care home settings, still leaving staff with only surgical masks to protect against aerosol transmission which they now recognise as a risk.

- You may wish to discuss this matter with your Chief Scientific Adviser Professor Andrew Curran and Dr Mary Trainor who represent HSE at PEROSH (Partnership for European Research in Occupational Safety and Health). Their [website](#) states:
“Unlike surgical masks, which primarily protect other people, tested class FFP2 or FFP3 respiratory protective devices protect the wearers themselves against the inhalation of pathogens”;

Whilst these two senior members of HSE may or may not have actually authored this statement themselves, both they and the HSE are, by association, in accord with it.

- As you will see from sections 4.1.2.3 and 9 of my report, the decision to downgrade respiratory protection from FFP3 masks to FRSM was taken on Friday 13th March last year. The decision was closely linked with a hasty decision to declassify COVID-19 as a High Consequence Infectious Disease (HCID). This decision was made at a meeting of the Advisory Committee on Dangerous Pathogens (ACDP), seemingly prompted by the Deputy Chief Medical Officer.

Two or more HSE personnel were present at that meeting. HSE may not have had a voting role but HSE was nevertheless party to a decision which directly resulted in thousands of healthcare workers being denied effective respiratory protection against COVID-19 through the switch from FFP3 respirators to surgical masks. Instead of the concerns which HSE should have raised about this there has, instead, been a deafening silence.

I would like you please to reflect on two letters that you were sent in April last year:

- Dr Will Ponsonby, President of the Society of Occupational Medicine; [6th April 2020](#).
Dr Ponsonby:
 - drew your attention, with evident alarm, to the fact that NHS Trust Chief Executives had stated that “more work-related deaths were inevitable”.
 - went on to state the Society’s view that they did not believe that this need be the case, with the proper application of controls no health care workers should die of acquired disease.
 - considered that we should have a target of Zero Work Caused Fatalities in this pandemic.
- Dame Donna Kinnair, Chief Executive & General Secretary, Royal College of Nursing; [17th April](#).
Dame Donna:
 - drew your attention, with obvious concern, to the increasing number of deaths of health and social care staff and issues associated with supply of the necessary PPE to protect them.
 - made a formal request to you for HSE’s intervention and enforcement to prevent further unnecessary harm.
 - referred to the Secretary of State for Health’s statement on 17th April that HSE should not investigate these deaths.

Sadly, with the downgrading of respiratory protection on 13th March, Dr Ponsonby’s laudable ambition for zero work-caused fatalities was never going to be the case.

As regards the request made by Dame Donna, it would appear that the HSE has neither intervened nor carried out any enforcement in relation to the ongoing tragedy of healthcare deaths. If the HSE has ‘had its hands tied’ via the Secretary of State for Health or any other ministerial interference in the performance of its statutory duties to protect the health, safety and lives of people at work, then you should rise above it and exercise your professional independence as is your right as the foremost regulatory body in the UK.

I put it to you that the flawed guidance issued by PHE and DHSC relating to the use of surgical masks as respiratory protection for healthcare workers working with patients who are (or suspected to be) covid positive represents a breach of [section 3\(1\)](#) of the Health and Safety at Work etc Act 1974 (duty of care to third parties).

It may also be argued that employers such as NHS primary and secondary care providers, ambulance trusts, care homes and domiciliary care providers are inadvertently committing offences under [section \(2\)](#) of the Act and [Regulation 7](#) of the Control of Substances Hazardous to Health Regulations 2002 and that their inadvertent breach constitutes an offence by PHE and/or DHSC under [section 36](#) of the Act. For the avoidance of doubt I am not recommending section 2/reg 7 charges be brought against those parties, since they have simply been following official guidance. However, I am suggesting that, if it were not for their Crown Immunity, the actions of PHE/DHSC in publishing misleading and dangerous guidance would justify prosecution by yourselves under sections 3 and 36.

If I, as a health and safety consultant, were to advise a client that they should protect their employees with a surgical mask whilst working in an environment containing aerosols containing a hazardous substance such as chrome VI or another hazard group 3, pathogenic virus such as SARS-CoV-1, then you would have me in Court on a section 36 charge before my feet could touch the ground.

I therefore recommend that you do the following:-

- 1) Speak with Professor Curran, Dr Trainor and any of your senior inspectors whom you trust to give you an honest and professional answer;
- 2) Ask them:
 - a. to read the evidence presented in my attached paper, the email correspondence that I have recently had with your 'Concerns and Advice Team' about this and any other research information they feel appropriate (e.g. research report RR619);
 - b. to reflect on the central tenet of HSE's decision-making process (i.e. the 'precautionary principle' as set out in 'Reducing Risks, Protecting People' [C100](#));
 - c. to tell you whether, if their son, daughter or loved one was working with covid positive patients whether they would be happy for them to be 'protected' by surgical masks
- 3) Finally, ask them to look you in the eye and tell you with hand on heart whether they, themselves, (*regardless of any other agency's guidance*) believe that surgical masks provide healthcare workers with adequate protection against airborne transmission of SARS-CoV-2 viruses;
- 4) If, as I anticipate, their answers come back as "No", then you should:
 - a. Send a letter to the Chief Executives of DHSC and PHE (or its successor organisation) insisting upon an immediate change of policy regarding their RPE guidance;
 - b. If this is not agreed (or not implemented) within two weeks, then instruct one of your inspectors to formally serve [Crown Improvement Notices](#) upon them (*akin to notices issued under [section 21](#) of the Act*) specifying the minimum period possible for compliance.

Even though they may have Crown Immunity from prosecution by yourselves you will have at least sent out a clear message that their policy is wrong.

I note that you can have already issued a Crown Improvement Notice against PHE (viz the breach of COSHH Regulations at [Porton Down](#) in relation to the handling and restraint of animals infected with hazard group 3 biological agents (*presumed to be SARS-CoV-2*).

This demonstrates that you can, if you wish, censure other Government departments when circumstances warrant it. I think you need to do this again, in relation to healthcare RPE which has far wider implications.

It would be helpful if you will decide exactly where HSE stands on this matter and inform the Chief Medical Officer, Professor Chris Whitty, before 22nd April. On that day he is to meet with colleagues from the AGP Alliance and the Royal College of Nursing. A wide variety of healthcare professions will be represented at that meeting, which is being convened specifically to discuss respiratory protective equipment and other risk control measures associated with protection of healthcare staff from COVID-19.

I hope you will leave Professor Whitty in no doubt that the Health and Safety Executive expects his department to ensure that healthcare workers are properly equipped with effective respiratory protective equipment when caring for patients with (or suspected to have) COVID-19 and that 'effective respiratory protective equipment' does not include surgical masks due to their inability to protect against aerosols.

Yours Sincerely

David Osborn BSc CMIOSH SpDipEM



cc : Ms Sarah Newton, Chair, Health and Safety Executive
Prof Andrew Curran, Chief Scientific Adviser, Health and Safety Executive

Dr Barry Jones, Chair, AGP Alliance
Dr Will Ponsonby, Immediate Past President of the Society of Occupational Medicine
Dame Donna Kinnair, Chief Executive & General Secretary, Royal College of Nursing

The Rt Hon Chris Skidmore MP, Member of Parliament for Kingswood - for onward forwarding to:
The Rt Hon Jo Churchill MP, Minister for Prevention, Public Health and Primary Care
The Rt Hon Jeremy Hunt MP, Chair of the Health Select Committee